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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 388

LETCHER SPICER BY SAM SPICER, Guardian and Committee, - - - - - - - - - - Petitioner

versus

J. BRYAN SMITH, Special Deputy Banking Commissioner and Liquidating Agent of Hargis Bank and Trust Company, - - - - - - - - Respondent.

RESISTING BRIEF OF RESPONDENT TO PETITION FOR WRIT OF CERTIORARI

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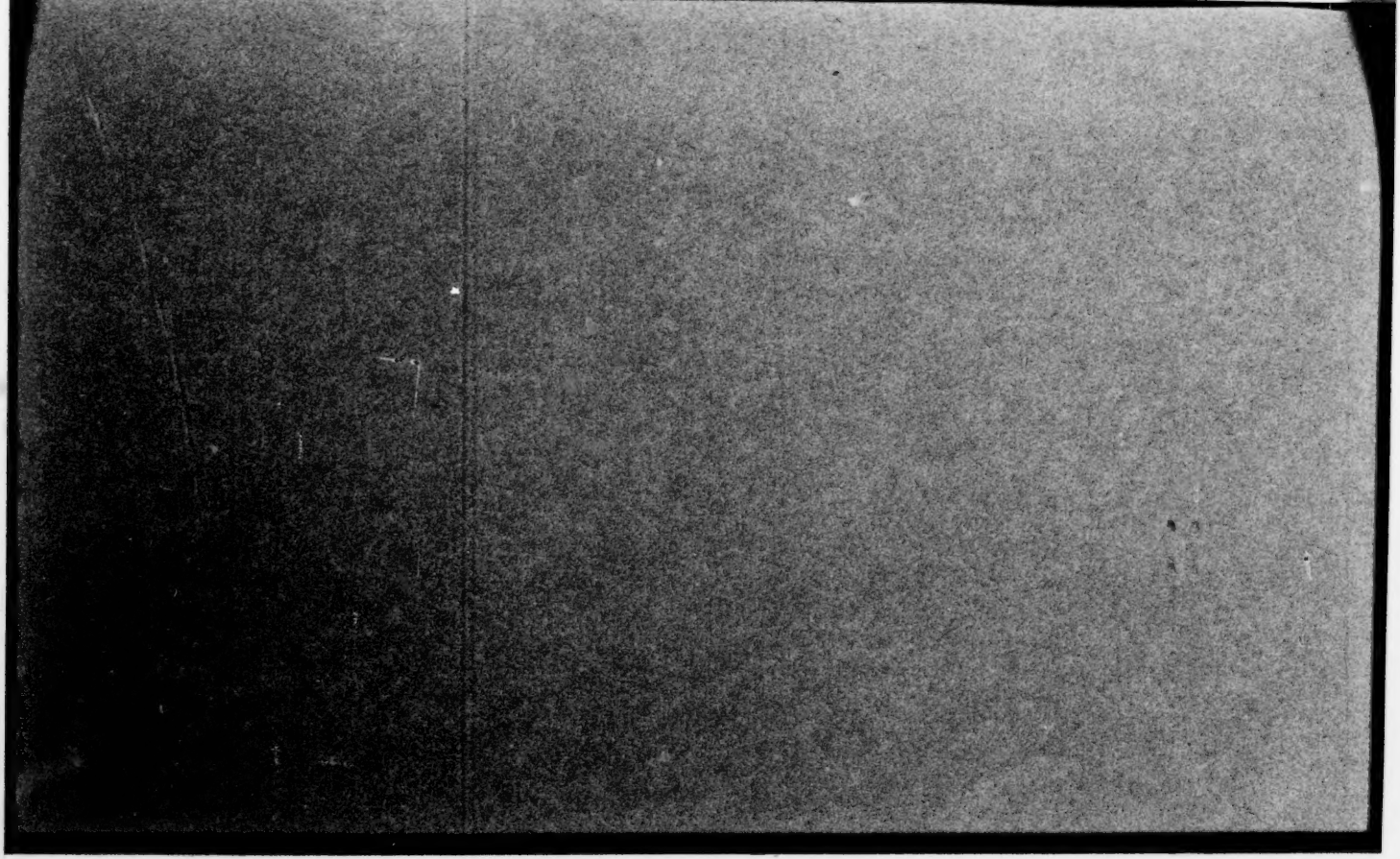
Counsel for Respondent.



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In resisting the petition for writ of certiorari, we respectfully submit the following brief and statement. The chief contention is that the counsel for petitioner misconstrues the statute of the United States, that he cites for authority to sustain his claim for a preferred lien on the assets of the Hargis Bank and Trust Company in liquidation. We will deal with the various statutes cited by petitioner in the same order in which they are set out in his brief.

STATUTES RELIED ON BY PETITIONER

(a) Revised statutes of the United States, Section 3466:

We contend that this statute, quoted by petitioner, has no application to the case at bar. It simply provides that whenever an insolvent is indebted to the United States, the indebtedness

due the United States shall have priority and preference over other indebtedness. The United States had no dealings with the Hargis Bank and Trust Company.

(b) 43 Statute Section 300; as quoted by petitioner:

Provides that every officer, enlisted man, and nurse, in the Army and Navy, may on application have war risk insurance. Another section of the war risk act provided that they would pay premiums for this insurance.

(c) 43 Stat. 613 (38 U. S. C. A. Sec. 454) quoted by petitioner,

Provides that insurance:

1st. Shall not be assignable.

2nd. Shall not be subject to the claims of creditors of any person to whom an award is made.

The learned counsel for petitioner places a strange construction on this section of the statute. Does it mean that the claim before the money is paid is not assignable, or does it mean, as petitioner contends, that the money after it is paid cannot be assigned or passed on, or I may say, spent?

Does the second mean that the award before it is paid is not subject to the claims of creditors? Or does it mean as petitioner contends, that after being paid the soldier could not pay his debts with it?

(d) 43 Stat. 608, (38 U. S. C. A. 426), is erroneously construed by the counsel for petitioner.

He says on page three of his brief as follows:

"Director of Veterans Bureau is charged with the duty to see that compensation paid to the guardian of an incompetent Veteran is properly accounted for."

We have read and re-read this section of the statutes, and are unable to find any language contained therein that justifies the broad assertion of the learned counsel of petitioner, as set out above. The words, guardian, curator, or committee will not be found in that section. It also does not mention any accounting for compensation by guardians, curators or committees.

This section deals exclusively with the powers of the directors and his employees and gives to him the power to make rules, and regulations for proof and evidence, forms of applications, investigations, medical examinations and adjudications and awards. All of its provisions are for the purpose of allowing the director to determine the procedure for application and award of War Risk Insurance.

(e) 43 Stat. 613 (38 U. S. C. A.), as quoted by petitioner.

This section simply provides that the director may suspend payments of insurance installments to any guardian who may neglect or refuse to render an account to him. This simply is to the effect that the government is interested in seeing that the money paid is properly used for the benefit of the veteran. It is certainly not inferable from the language of that section that the government retain a lien on the money paid to the guardian, or committee.

(f) 43 Stat. 1312 (38 U. S. C. A. Sec. 556,) as quoted by petitioner, simply makes it a crime against the United States for a guardian or committee who has received war risk insurance money for a veteran, if he embezzles it or steals it.

The learned counsel for petitioner after quoting all the above sections, by his own course of reasoning, concludes that the United States holds control of war risk insurance money paid to a guardian or committee until it is actually spent for the veteran. We contend that no such deductions can be drawn from

the authorities cited. He further takes the position that the guardian or committee is the agent of the government and not the agent of the veteran.

We contend that a guardian is an agent for his ward, and a payment to him of money is a payment to his ward. He is appointed by the county court in the county where the ward resides. The court that appoints him requires of him a good and sufficient bond with sound and safe sureties to protect his ward from any loss or misapplication, that is made of the money. In the petition in the case at bar petitioner states as follows:

> "That by an order duly and regularly made by the Breathitt County Court, on the 29th day of September, 1919, the Plaintiff, Sam Spicer, was duly and regularly appointed the Guardian of said Letcher Spicer and duly qualified by taking the oath required by law and **executing bond.**"

It is plain to be seen that the Guardian or committee, Sam Spicer, in the case at bar is under bond for the money that he had on deposit in the Hargis Bank and Trust Company, at the time it closed in the sum of $6,070.80. The surety on his bond was approved as being good by the Breathitt County Court. There are no allegations in Plaintiff's petition to the contrary, and the surety on said bond is good. Sam Spicer drew this money from the government as the guardian and committee of the incompetent veteran, Letcher Spicer, after he had executed a good bond. He had a right to deposit the money in any bank he desired. He did deposit the money in the Hargis Bank and Trust Company, in the same manner as any of the other depositors. As far as the assets of the Bank are concerned he stands in the same position as any other depositor, and is entitled to file his claim as a common creditor to receive the same percentage on his claim as any other depositor. If, after liquidation of the bank he only receives a percentage of his claim, he then has a good bond with

good surety upon which the veteran, Letcher Spicer, may recover the balance of his money. He cannot lose any portion of his money and it certainly would be both unjust and unfair to the rest of the depositors of the bank to allow him a preferred claim against the assets of the bank and lessen their percentage of their deposits, when he has full protection for all his money under the bond.

On page six of petitioner's brief, will be found the opinion of the Court of Appeals of Kentucky, reported in 244 Ky., 68, in which that court in the case at bar ruled as follows:

> "A careful examination of the Statutes of the United States fails to reveal any expressed provision authorizing the preference given to this claim, and none has been pointed out.—Furthermore we find nothing in the Acts of Congress relating to adjusted compensation and War Risk Insurance from which to draw a reasonable inference that such preference is warranted or was intended."

It is true that the highest courts in some of the States have held, and construed the Statutes of United States agreeable to the contention of petitioner. None of these cases seem to have been brought to this court. We find in the decisions of the highest courts in the many states must conflict on their rulings on certain principles of law. While Nebraska, Missouri, Iowa and Virginia have decided in favor of the contention of the petitioner, Kentucky and other states have decided strongly against the petitioner's contention. Since we know that the several states have conflicting rulings on many principles of law, about all there is to conclude from the decisions, is that what is the law in one State, is not the law in other states.

We therefore conclude that the Statutes of the United States cited by petitioner do not authorize a construction of said statutes contrary to the decisions of the highest Courts of Ken-

tucky, which has decided that petitioner is entitled to no preference on the assets of the Hargis Bank and Trust Company.

Respectfully submitted,

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